No. 85-1437 (D)

Supreme Court, U.S.
FILED
DEC 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

PATRICIA WILKINS,

Petitioner,

v.

CHRISTOPHER SAYRES, RONALD LOVEJOY, JOSEPH ENGLEHARDT, EDDIE SANCHEZ, RICHARD BUCHOLTZ,

Respondents.

PATRICIA WILKINS,

Petitioner,

v.

FREDERICK ROUSCH, ORRIE YNIQUEZ, WILLIAM COWHEY, WALTER JACKSON,

Respondents.

THIRD SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

STEPHEN YAGMAN, a member of
YAGMAN & YAGMAN, P.C.
10880 Wilshire Boulevard
Suite 1900
Los Angeles, California 90024
(213) 475-4988

Attorneys for Petitioner
Patricia Wilkins

---

5 PM

In the Supreme Court of the United States

OCTOBER TERM, 1985

PATRICIA WILKINS, PETITIONER,

v.

CHRISTOPHER SAYRES, ET AL., RESPONDENTS.

PATRICIA WILKINS, PETITIONER,

v.

FREDERICK ROUSCH, ET AL., RESPONDENTS.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner submits this Supplement to her Petition for Writ of Certiorari to set forth new authority for the position taken by petitioner in her Petition; to wit, that in civil rights actions brought under 42 U.S.C. 1983 (1982), in instances that the law was clearly

established with respect to the constitutional right alleged to have been violated, no jury instruction may be given on the affirmative defense of qualified immunity; and to demonstrate that the law in the Second Circuit is in direct conflict with the law in the Ninth Circuit by virtue of the Second Circuit opinions cited herein, which reported since Petitioner's Second Supplement was filed.

In Weber v. Dell, 804 F. 2d 796, 803 (2d Cir. 1986), reported December 22, 1986, the court held as follows:

> In Salahuddin v. Coughlin, 781 F. 2d 24 (2d Cir. 1986), this court explained the Harlow test as follows: "The pertinent test in applying [the objective good-faith] defense is whether the federal law violated was clearly established, ... not whether a reasonable person would have

> known of the law." Id. at 27 (citations omitted). [Since] the law was clearly established ... the Sheriff is not entitled to the good-faith immunity defense. See Jones v. Edwards, 770 F. 2d 739, 742 n. 4 (8th Cir. 1985).

Weber, and Salahuddin, both fully support petitioner's position as taken in her Petition and are accurate statements on the law of qualified immunity. Since the District Court in petitioner's case found, as a matter of law, that the relevant law was clear, defendants were not entitled to have their defense of qualified immunity to to the jury, and it was error for an instruction on qualified immunity to have been given.

Additionally, these cases put pay to defendants' contention that notwithstanding a finding that the relevant legal norm was

clearly established, a jury still must determine the issue of "whether a reasonable person would have known of the law." Ibid. Only when "extraordinary circumstances," Harlow v. Fitzgerald, 457 U.S. 800 (1982), are both pled and proved may the issue of whether a reasonable person would have known of the law be presented to a jury. Only in the Ninth Circuit is this issue presented to a jury both when it is found that the relevant legal norm is clearly established and when "extraordinary circumstances" are neither pled nor proved.

The law on this point is in conflict between the Ninth Circuit and the Second Circuit, as well as between the Ninth Circuit and the Seventh and Tenth Circuits. See Supplement to Petition for Writ of Certiorari and Second Supplement to Petition for Writ of Certiorari.

STEPHEN YAGMAN, a member
of YAGMAN & YAGMAN, P.C.
Attorneys for Petitioner